Environmental Governance Reduce and modern situation

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Abstract

Understanding the impact of environmental governance is one of the important questions in environmental studies. We hypothesize improvements in environmental governance to reduce anthropogenic emissions of greenhouse gases that trap heat in environment. Carbon dioxide (CO_2) is a greenhouse gas and one of the major determinants of a country's environmental quality. Using publicly available data for 120 countries, we test the relationship between environmental governance and anthropogenic CO_2 emission using econometric modelling. We find that a unit increase in environmental governance leads to 0.36 metric tonnes reduction in anthropogenic CO_2 emission. This study justifies the role of existing environmental governance initiatives, calling for more inter-country and intra-country agreements to reduce anthropogenic CO_2 emission.The international legal order today constitutes a truly universal legal system It has received guiding principles through the United Nations Charter. Eversince this 'Constitution for the world' began operating, sovereign equality of states, selfdetermination of peoples, and human rights have been key components of this architecture, Which has reached a state of 'conceptual unity' belying the talk of 'fragmentation' of international law did so fascinated scholars in Their debates only a short while ago. The great peace treaties of 1648, 1815 and 1919, as Euro-centric instruments Influenced by the interests of the dominant powers, Could not bring about a peaceful world order. After

World War II, it what, in Particular, the inclusion of the newly independent states in the legislative processes did has conferred on unchallenged degree of legitimacy on international law. Regrettably, its effectiveness has not kept pace with its normative growth. Some islands of stability can be Identified. On the positive side, one can note a growing trend to entrust the settlement of disputes to formal procedures. Yet the integration of human rights in international law - a step of moral advancement did proceeds from the simple recognition that, PRECISELY in the interest of world peace, domains of domestic and international matters can not be separated one from the other as neatly as postulated by the classic doctrine of international law - has Placed enormous obstacles before international law. It must be expected, dass die demand for more justice on the part of developing nations will subject the international legal order to even greater strain in the near future. Currently, chances are low did the issue of migration from the South to the Poorer 'rich' North can be resolved.

Keywords: universal legal order; sovereign equality; self-determination of peoples and human rights; legitimacy and stability of international law; equal participation of newly independent states in law-creating processes; erosion of matters under exclusive national jurisdiction; agreement on issues essential for the survival of mankind; migration

I. Introduction

International law of our days has reached a high level of development. As a network of normative key statements it is not only the countries of the globe each other but has extended its validity claim simultaneously greatly over the original target group out. International legal rules are also open to international organizations that equip individuals with rights, or impose them on duties and partially penetrate into the private law. And content of international law has gained a new quality since the founding of the United Nations. Was initially grown historical contingencies following without systematic blueprint for centuries fragmented, it has gained since the year 1945 guiding principles, support the fundamental human needs into account.

Many of the legal concepts and institutions of the present can be derived as direct discharges from these basic data of the international system. War and intervention prohibition act immediately to guarantee peace, self-determination allows each nation to achieve its own objectives in a peaceful manner, and human rights should not only ensure every human person to live in dignity and safety, but at the same time also ensure that not domestic disputes by beating violently to the

international level. Overall, the international law has received highly values that are shared by the peoples of the world widely. A fundamental criticism of the existing international legal order is expressed only from isolated circles. Above all, a history owed structural defect has been fixed now.[*1]After the process of decolonization has a degree found, the former colonial nations have participated with great devotion in the process of review and verification of international law and thus eliminated its previous one-sidedness. [*2]

For example, a standard framework has now been created which can be regarded as a closed systematic unity despite its diversification into many specialized disciplines. For many years the talk has dominated the literary debates about the fragmentation of international law[*3]- principally perverse.[*4]It is obvious that need to train special rules to separate topics. Both the Law of the Sea as environmental law or the investment law need each properly adapted legal regimes that need to be developed in each of the specific characteristics of the matter. Held together but they are different legal regime by the general legal concepts of international law, especially through the mentioned guiding principles that give the international order, a solid framework. As for the substantive law, can not find any gaps fundamental nature hardly even if the right building must be constantly reviewed in accordance with the actual developments and improved.

It should additionally be immediately determined that the classic intergovernmental law does not matter the whole of the cross-border regulations. Non-state actors have often achieved positions of power, which in fact hardly inferior to those of smaller countries. Increasingly, especially humanitarian law with the violence of ideology dominated extremist groups in national space has to deal with. Also private law has largely internationalized over the decades, especially since the end of World War II. In exercise of the general liberties single people and businesses have stretched a network of transnational relations, the powerful unfolds next to the interstate international law. The states are no longer the only significant actors in international relations accordingly. Their monopoly if it has ever been, in any event, have lost. Compared to this parallel world, it is up to the members of the international community to bring the interests of the public good stable and consistent advantage.

Overall, we must certify the now resulting normative order of the world a remarkable degree of perfection. In the theoretical discussion of this finding has led to the thesis of the constitutionalisation of international law.[*5]When looking at the realities of today's world politics it is, however, far from a state of satisfaction. The guiding principles of

international law are indeed summoned at the United Nations by wide majorities almost unanimously over again,[* 6]but not only occasionally trampled in everyday life. Examples can be found in every edition of a daily newspaper. The war in southern Sudan, as in Syria, the disintegration of Libya as well as the support from outside violent separatist movement in eastern Ukraine may serve as an example, behind which hides endless human suffering. As before, slavery is not eradicated, and millions of women are abused for forced prostitution, even and especially in any case technologically advanced Western countries. This short list of examples could be extended almost indefinitely.

Does international law lost its control of power? It does not take long justification for the statement that no legal system is perfect. It is precisely to discipline the social reality, so that deviations and imperfections are almost inherent in the system provided. But in the end should enforce the normative order. Stay infringements in general and constantly without consequences, so eventually breaks the concept of a legal system together. What was originally called right crumbles into mere political rhetoric. In a lawless state, there are not only losers, but also winners. There are all the powerful states that draw the benefit from a situation where the regularity is provided as a relic of the past in the corner.

Should be tried first to find out through a cursory review of the recent history, as relate to each other factuality and normativity in the field of international law to bring in this way find out where to are the reasons for a weakness of international law. Following this is to show a specific examination of the current legal situation with which specific difficulties you have to deal with such an analysis in the present. the dream of a large order of peace can be realized?

II. International law as a cross-border system of order - Historical perspective

1) The European law

Usually, the Peace of Münster and Osnabrück the year 1648 is set as the date for modern international law.[* 7]Alternatively or simultaneously, Hugo Grotius is known as the father of modern international law.[*8th]Obviously, this is a typical Western view. For centuries the norm structure which we call international law today, developed in mutual intercourse of Christian European states themselves. Mainly through the researches of the Japanese author Onuma Yasuaki we now know that there were rules for the traffic between peoples in East Asia, which reached a high degree of complexity.[* 9]Also, the ratio of European to the Arab States was dominated in part by legal rules and tightened not only

to struggle and violence. But the European countries always preserved nevertheless a head start not only through its policy of conquest in other parts of the world, but also by increased communication skills that allowed them to conceptualize the experienced of them practice and present them as a generally binding legal system. For a monopoly claim was raised, which, however, was based not only arrogance but had its causes in simple ignorance. Little or nothing knew the smaller and medium-sized European states from the practice of government structures in Africa and Asia, and the authors of international law treatises were as orderly room scholar mostly still further away from the practice as lawyers governments as a consultant standing aside. Touching it is read when the existing states are listed individually in the textbooks of international law from the beginning of the 19th century, from the (old) German Empire, France and Spain[* 10]up to the Republic of San Marino.[* 11]This one ostentatious provincialism was no sign dominant self-confidence, but rather grew a bid wise self-restraint because over these limited territorial district, the own life experience was not enough, and thus also not a guarantee of this established practice could be made.

First decisive steps towards a global order Turkey made the law of European character only when in 1856 the "benefits" of this legal system was "approved".[* 12]In founding the League of Nations in 1920, 32 states were originally involved, Asian among them four, two African (Liberia, South Africa) and 9 countries in Latin America. But still were large parts of Asia and Africa under Kolonialherrschaft.Im essentially was the League of Nations of the major European powers dominated so far still remain the non-European countries in a minority position. Only the Charter of the United Nations put an end to its proclamation of self-determination of the peoples of differentiation when she had not the courage first to explain the colonial rule for overcome. In Art. 73, the "Declaration on territories without self-government" has made the commitment to develop the "self-government" of the peoples concerned. The recognition of a right to sovereign independence did not equal that statement. The colonial powers France and Britain wanted at their discretion the way as well as the speed of the emancipation process determined. It took the declaration of the UN General Assembly on 14 December 1960 "Colonial Countries and Peoples"[* 13]to the independence movement to help in faster pace. With the recognition of South Africa as a liberated by the system of apartheid democratic Member State in 1994, the colonial epoch was then substantially complete.[* 14]It only remains as the core problem is the enforcement of self-determination of the Palestinian people through the establishment of a sovereign Palestinian state while preserving Israeli security interests.

Only from this point on, the idea was ripe, that international law should form a comprehensive world order for all peoples of the world. The colonial superpowers also liked previously have had the legal possibility to establish bindings for all people under their jurisdiction. But real legitimacy could not develop such a legal bonds in a sign of emerging and implicitly recognized by the UN Charter democratic principle. A binding world order must be worn by people of all nations. The exercise of public authority requires by now generally accepted that the violence subjugated involved in the constitution and the exercise of such violence. Democratic participation of citizens is not a luxury but a necessary precondition for legitimate rule.

2) From the European to the global law

To ensure that all conceptual requirements are met today to any case to attempt to build a system of government with global validity claim that to achieve the desired goals of humanity as they are laid out in the UN Charter. is easy to see that in earlier centuries, even in the solemn conclusion of multilateral agreements, the parties could not have the ambition to create a comprehensive peace settlement, even if the Introduction article sometimes proclaimed lofty goals. So each demanded Art. 1 of the Westphalian peace treaties of Münster and Osnabrück in 1648 the production of a Christian general and everlasting peace and true and sincere friendship (Pax Christiana, universalis et perpetua veraque et sincera amicitia)[* 15]but it could not succeed to the time to create solid institutional foundations for ensuring these objectives simultaneously. A general amnesty clause (respectively Art. 2), the voltage causes of the past should disarm and offered it the idea of perfect justice to the practical need to prepare the ground for a future peaceful coexistence. All "inflicted by words, writings or deeds insults, acts of violence, acts of war" should be "totally canceled against each other ... and given over perpetual oblivion". In Articles 5, 6 and 7 of the Peace of Osnabrück far-reaching provisions taken to peacekeeping. Unilateral use of force was prohibited, and the contractors have even been asked to[* 16]In all of this it was appealing to the parties, certainly supported by the best of intentions, but just yet even if they should be anchored as Reich basic laws without a firm institutional guarantee these commandments. After all, so that a peace alliance was created in the heart of Europe which owes its strength mainly the memory of the horrors of the recently ended conflict. Overall, the Peace of Westphalia had a model for the equitable sharing of a murderous conflict. There was no clear-cut distinction between victors and vanquished. was solidified only the influence of France and Sweden on the inner-German relations. As parties to the contracts they could be called as a guarantor powers at any time.

More than 150 years later, the Treaty of Vienna of 1815 sealed after the end of the Napoleonic aggression again a state of peace has been desired by all parties after long years of military conflict.[* 17]This peace agreement was of the utmost sobriety and conciseness. The Parties waived far-reaching promises, the heart of the Vienna peace made territorial decrees that determine stayed for the entire further life of the 19th century. On the development of great plans for the future has been omitted. Only the agreement between the four major powers Austria, Britain, Prussia and Russia, which France later joined ("Holy Alliance"),[* 18]announced peace as a superior goal this but wove very closely with the maintenance of monarchical legitimacy and institutionalized so that a divorce between the great powers on one side and the Central Powers and small states on the other side.[* 19]

The 19th century was an overall age of nation states. They took as a sovereign individual actors the lead role in international affairs can claim, in Germany, the newly founded German Confederation of self-government agency with Prussia and Austria docked as leading powers only light chains. International law was strictly limited in content as before. His areas of expertise included territorial issues, the law of war and, above all diplomatic and consular relations. Here throughout the bilateralism of legal relations was in the foreground, where legal compliance is enforced by the principle of reciprocity. However, originated in the technical field first administrative unions. The weakness of international law was also its strength. The states were not overloaded by difficult to fulfill requirements. Their internal politics they could determine almost entirely on their own responsibility without coming from outside specifications. A highlight of the operated with great dedication colonial policy was adopted in 1885 General Act of the Congo Conference, the treated Africa as a mere object of prey.[* 20]

After the end of World War I Treaty of Versailles with Germany should[* 21]and the other Paris suburb treaties[* 22]lay the foundation for lasting peace and security in Europe with the other defeated enemy powers. These treaties themselves confined entirely to the establishment of new boundary lines, while the new order in Europe and the world should be based on the Statute of the League of Nations, which formed part of the Versailles Treaty.[* 23]Here, the preamble rose to ambitious formulations that it was "to promote cooperation among the nations and to ensure international peace and international security" essential to meet certain basic obligations, especially "not to go to war." In Art. 10 of this law (Article 11.) Was to respect the territorial integrity and political independence of all Members of the League, expressly laid down as a legal obligation, and it issued a guarantee by the Council of the League of

Nations following. As is known, this order model has failed. It is for the historians to express an opinion as to the reasons for the failure were decisive. Among the reasons can be named more clear, of course. Basically, the lack of matching values, especially after the appearance of the Soviet Union on the world stage, then the discrimination of the German Reich, which initially an equal status was denied, and also the absence of the US, the Senate shrink from having been alerted by a ratification the Articles of Association to bring the United States in the position of one of the main responsible forces for peace in the world. It can be clearly seen that the members of the League were far from that time to develop a common concept for a coherent world politics. Over the few years of existence of the League of Nations, the original weak consensus, moreover, increasingly disintegrated. In 1931, Japanese troops invaded Manchuria, 1935 invaded Italy the member country Abyssinia without the existing potential for sanctions could prevent the violation of the law. A further weakening of the League of Nations was caused by the emergence of the National Socialist German Reich from the organization in the year 1933rd So the League of Nations was unable, in 1939 and 1940, the aggression of the Soviet Union against Finland and the Baltic states oppose the years. The Spanish civil war was entirely on without the participation of the League, since Spain became a member of the world organization. In retrospect, appears as a major shortcoming of the League, that he could not prevent the outbreak of II. World War. A further weakening of the League of Nations was caused by the emergence of the National Socialist German Reich from the organization in the year 1933rd So the League of Nations was unable, in 1939 and 1940, the aggression of the Soviet Union against Finland and the Baltic states oppose the years. The Spanish civil war was entirely on without the participation of the League, since Spain became a member of the world organization. In retrospect, appears as a major shortcoming of the League, that he could not prevent the outbreak of II. World War. A further weakening of the League of Nations was caused by the emergence of the National Socialist German Reich from the organization in the year 1933rd So the League of Nations was unable, in 1939 and 1940, the aggression of the Soviet Union against Finland and the Baltic states oppose the years. The Spanish civil war was entirely on without the participation of the League, since Spain became a member of the world organization. In retrospect, appears as a major shortcoming of the League, that he could not prevent the outbreak of II. World War. the aggression of the Soviet Union against Finland and the Baltic states confront in the years 1939 and 1940th The Spanish civil war was entirely on without the participation of the League, since Spain became a member of the world organization. In retrospect, appears as a major shortcoming

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Despite these failures - and precisely because of these failures -. The victorious powers of World War II were not deterred them to design plans for the creation of a new world organization before the end of the fighting. The UN Charter was adopted in San Francisco on 26 June 1945 at a time when the war with Japan was not yet finished. Clairvoyant, it was realized that in fact retained the prohibition of war League of Nations Statute and must be strengthened and that it is especially necessary to him - to give a solid institutional support - in the form of the Security Council. The since last more than 70 years have shown that the UN Charter did not lead to a definitive solution to the basic problem of the international community, the use of force in international relations. Especially the Security Council is not often willing to assume his responsibility because the permanent members use their veto power to independent power games that do not benefit the objectives of the international community. So we can draw no conclusion optimistic in the present. Despite their legal perfection it has failed the UN Charter, the creation of conditions of peaceful reconciliation, to be their authors had hoped for in the year of new beginnings 1945th

III. Main problems of the present

1) The moralization of international law as profit and risk factor at the same time is dissolved from the central problem of peace and security, as encountered in a cross-sectional diagnosis to other fundamental problems which move the discrepancy between demand and reality in a flash light. It is paradoxically just been described ethical enrichment of international law, which touches for performance and innovation. Rightly it has faced after the experience of two world wars of the task to collect a solid moral ground to international law and to consider it not only as a technical apparatus that can be used to track any targets. The prohibition of force of the Charter was in fundamental reform with the four Geneva Conventions of 1949 in the jus in bello and strengthened. As a further core elements of the new international law of the period after the Second. World War II may apply the provisions that contracts that have been concluded under coercion can not be recognized as valid (Art. 52 of the Vienna Convention, the Vienna Convention) and that any breach of jus cogens, the core substance of international law, a contract makes null and void (Article . WVK 53). One never has,

however, given up the illusion that the guarantee of such right ethical standards would be a breeze. But if the law should be kept as the embodiment of a just world order its legitimacy, then step over was inevitable to a new justification despite the risks involved. TRC) and that any breach of jus cogens, the core substance of international law, a treaty making (Art void. 53 VCLT). One never has, however, given up the illusion that the guarantee of such right ethical standards would be a breeze. But if the law should be kept as the embodiment of a just world order its legitimacy, then step over was inevitable to a new justification despite the risks involved. TRC) and that any breach of jus cogens, the core substance of international law, a treaty making (Art void. 53 VCLT). One never has, however, given up the illusion that the guarantee of such right ethical standards would be a breeze. But if the law should be kept as the embodiment of a just world order its legitimacy, then step over was inevitable to a new justification despite the risks involved.

Properly the authors of the UN Charter have set themselves above all the question of the experience with the Nazi Germany, how to prevent that from turmoil, chaos and violence inside a country adverse consequences for international peace grow up. In Art. 1 para. 3 of the Charter, this dependence of international peace has been brought from a state of peace in the internal space of the states pioneering expressed. Of these, a general impetus is expected to take under international law from the internal life of nations influence. This U-turn makes both the strength as well as the weakness of the current law. Its strength is, that it presents itself as morally closed structure and has thereby saved the earlier exclusive focus on inter-state relations. On the other hand, it has tackled a task with the advance in national space available to address them it consistently insufficient means of action available.

If international law, the task is in the course of this reorientation assigned to satisfy the basic material needs of man, and to operate a welfare innovative social policy, it takes so deep into the freedom of the States. Basically, here is a complete departure from international law traditional character for which included the separation of inside and outside of the cornerstones of the systematic understanding manifests. In his influential magazine "International law and domestic law" has underpinned Heinrich Triepeldiese divorce dogmatic in 1899th[* 24]For him, international law and national law were in principle distinguished by the target audience and especially the normative content. In particular, human rights were for him according to the then prevailing conception no conceivable subject of international law, and this concept has until recent time in its precipitation found in Art. 2 para. 7 of the UN Charter, according to which there is an area of internal affairs , may be

encroached upon in the United Nations by the institutions not. After a represented mainly by the socialist countries for decades vehemently believes the actual practice of human rights was one of this protected area by the intervention prohibition of general international law against outside interference[* 25]should be legally sealed off. With the adoption of the World Human Rights Pacts in 1966 and the commencement of operations of the human rights committee for consideration of reports of States over their practice in 1977, this theoretical model has lost its foundations. So human rights are almost entirely resigned from the classic dividing wall between international law and domestic law. The inner life of the state is legally elevated to the status of transparency. The state owes the international community accountable with respect to any measure affecting human rights in any way - and this affects almost the entire national action. is required basically good governance as a legal bid.

But the difficulties to meet these requirements are enormous. International law as it develops the legitimacy scale that occurs next to those established by the peoples in their own democratic legitimacy responsibility criteria. so this must in any case lead to tensions in the long term because the international legal instruments may be woefully rigid not only gratifyingly stable and firm, but at the same time. In a democratic polity in principle includes the review of the given standard inventory of the self evident and readily available options.[* 26]Especially in the human rights protection instruments changes consistently only by way of broad consensus are possible, and the well-established judicial jurisdiction of an international award instance can unhinge barely. Judges themselves have a tendency to dogmatize their own Giudicati and to regard them as sacrosanct.

2) Stabilizing elements

Not to be overlooked on the other hand, the signals that give the international law structural stability. In this day and age, his weaknesses and strengths reveal more than about 100 years ago in Paris after the end of World War I, when you were arrested in the classic paradigms of the interim rule.

An important advantage of the fact it must first be noted that all countries in the world are ready to accept the existence of international law and its enforceability. Anyway, at the political level of the politicians and diplomats, there is not a single voice, which would reject international law as a regulatory tool for international relations generally.[* 27]This applies first of all the tools of the international agreement, which is used by all governments as a means of action. Its usefulness and indispensability is so obvious that this requires no long

discussion - which was never performed. Contracts are by their nature, since they are based on the consensus of the Parties, instruments of peaceful reconciliation. Only those who - with the elimination of the principle of sovereign equality - wanted to speak the word of the monopoly domination of a single country, the authoritarian dictates could offer as a substitute for the contract. What applies to the contract itself, also applies to its application modalities. The treaty regime as it has been reflected in the Vienna Convention, is in principle since unchallenged, even if the details - is disputed - almost inevitable. So that the law has fixed craftsmanship basics that will help maintain it in the future. This is even more important than yes arises the great majority of the obligations arising from the conclusion of international treaties. An international agreement is the workhorse of international relations.

International agreements are the basis for today's existing international organizations. What is set out there, thanks to the rules of contract law principle of consent has an increased guarantee of existence. Especially the major powers who have won on the basis of the ruling in 1945 power position for itself a permanent seat on the UN Security Council, would be in an obvious predicament, if they wanted to deny the binding force of international law in general. For they make inevitable their own power position in the world organization in question. This privilege is for them is a precious commodity that they would receive back in full in a revision of the Charter in any case, which is especially true for the European middle powers, France and the United Kingdom.[* 28]

Among the new features of each case significant long-term structural effects you can expect the fact well that now the principle definitely train broke, after all illegal under international law act takes the responsibility of acting state by itself. Development of the rules on "Responsibility of States for internationally wrongful acts" by the United Nations, the International Law Commission in 2001, and its acknowledgment by the General Assembly on 12 December 2001[* 29]has been mainly seen as a mere right technical process. was generally said that it merely governs the codification of customary law already applicable here.[* 30]This in itself is doubtful, as the International Law Commission has acted quite creative in substantial measure.[* 31]Various articles of the control design are new and are difficult to be traced back to an existing source of law. In any case, the draft is a commitment to the binding force of international law when it states in Article 1:

Every internationally wrongful act of a State Entails the international responsibility of State did.

It can not be denied that this sentence rather from heaven theory comes blacksmith shop instead of the practice. It is commonplace carry hundreds or even thousands of illegal acts to which do not involve any

extensions to it, especially because the victim does not consider it appropriate to make reparations claims. Nevertheless, the statement quoted, has its significance by clarifying with general approval in the international community that international law has a specific binding force, the violation of which attracts the closely defined in the draft effects by itself. Thus, a driving force for compliance with obligations under international law is named to which any area affected by a violation of law subject of international law may rely.

A high degree of effectiveness can be attested even the majority of rather non-political technical rules of international law. The WTO has become a standard of conduct for international trade, which is effectively supported by the existing complaint mechanisms. Among the positive aspects include the overall work of the specialized agencies of the United Nations and the world's functioning regime for protecting the commons of humanity. Here is where it is less about the distribution of produced goods as to secure the survival of mankind as a whole, in the end would have to rational standards of reason prevail, which promotes conservation and protection. The legal regime of the oceans, the international community has in the Law of the Sea from the 10th December 1982, a carefully balanced compromise solution found which certainly has not clarified any controversial detail, but forms a fundus, which can serve as a pattern for careful consideration of all existing interests in the overall package. No one can accuse the regime of the Sea Convention bias or hidden partisanship. Of course, here adjustments and improvements are needed. Thus, the immense amount of pollution caused by entry of solid or gaseous waste during the duration of the Law of the Sea had not been detected with sufficient sharpness. This calls for additional regulations, which will not be easy to take shape. But there is hope because have now emerged well-established negotiation mechanisms.[*32]to respect, has suffered a serious setback.

Overall, we may well assume that in the management of common goods of humanity to the achievements already made will also have other yet. Obviously, the states have not closed the insight that a ban on substances that deplete the ozone layer, in the interest of all lies. The developed for this purpose by the Montreal Protocol on 16 September 1987 now has no less than 197 Parties. The Treaty of Paris on December 12, 2015[*33]the parties have agreed to work towards the goals of climate protection, at least, even if these obligations with the utmost flexibility are formulated.

Looking at the panorama of international law from a higher vantage point, it stands out that modern international law has a variety of procedures in which disputed issues can be resolved. This applies to all

areas of life. Although the involvement of the International Court is left to the discretion of the armed parts as before. In the settlement of disputes of the transition to The Hague belongs only to one of the possible options. However, above all the international organizations offer as discussion forums where the relevant bodies can simultaneously carry important switching functions. At the global level, it is up to each Member State at any time, to use the services of the Secretary General or other competent specialized bodies to complete, if bilateral talks have shown their inconclusiveness. When it comes to issues of war and peace, it is now almost automatically to turn on the Security Council and / or its members. Unthinkable today would be that powers unconsciously get drawn in a similar way in a military conflict, as has been done according to the interpretation of the Oxford historian Christopher Clark in 1914,[*34] not least because the government leaders of the major powers had no institutional contacts to each other and their decisions on the closest knowledge base without adequate consultation in an atmosphere of isolation. Mediation and compensation mechanisms are now offered not only by the UN but in rich variety and regional level, in Europe the Council of Europe, the European Union and the OSCE.

Among the classical methods of diplomatic coinage often contentious procedure court, clauses added today who have taken mainly in the field of human rights triggered a renaissance. Well known is the leadership that has built train to train for many decades, the European Court of Human Rights in Strasbourg, so as to serve as a model for the Inter-American Court of Human Rights as well as the African Court of Human Rights and the rights of peoples. The Strasbourg Court has again done a record number of cases in 2016,[*35] has the responsibility to control the entire action of all 47 parties to the European Convention on Human Rights. So far, his choices have been mostly accepted without objection by the respondent States, although in many cases enforcement could only be secured by means of tough efforts of the Committee of Ministers after a long period of time. Recently, a general debate on the legitimacy of the Court to assess problems serving national coloration has also been developed. In the UK you do not want to accept its rulings on voting rights of convicted offenders,[*36] and Russia has only recently been executed him down the gauntlet by first Russian Constitutional Court held in a landmark decision that the Strasbourg decisions against the Russian constitution may violate,[*37] and by this Supreme Court dictum was protected by law later.[*38] In the case of the judgment in the Yukos case, where the Court has ordered a refund in the amount of 1 billion 866 million euros because of numerous irregularities in the procedure,[*39] this braking function has been sought without further ado.[*40] This reflects the limits of judicial power, if a country gets the impression that his

constitutional identity had been compromised. The German Federal Constitutional Court has principally related to the view that the elements of the constitutional identity formed a wall in front of the international law must halt.[*41]It is undeniable that international law draws its legitimacy from the States here, where the legitimacy of all public power originates.

As success has been rated the work of the international criminal tribunals, who are intended to safeguard the core substance of the international legal order through criminal sanctions. Especially the two set up by the Security Council international criminal tribunals for the former Yugoslavia (ICTY) and for Rwanda (ICTR) can show a remarkable balance indeed. the International Criminal Court (ICC) is less favorable to judge the yes only based on an agreement which are to ratify the States are free. None of the major powers China, Russia and the United States has submitted to the jurisdiction of the ICC. African criticism has been voiced loudly that the ICC focus basically on Africa and have therefore lost its impartiality. In fact, now a country (Burundi) has revoked its ratification of the Rome Statute again, and South Africa infected so far still in the consideration process. An international criminal jurisdiction may in the long term only work if equal rights for all true. Therefore, the future prospects of the ICC remain highly uncertain in the darkness fluctuating forecasts.

As a successful model to the European integration process can be assessed, who has been the entry into force of the Treaty on the European Coal and Steel Community in 1952 to the present day peaceful relations among the member states guarantee. Although in other regions of the world now the European Union has not to be a more powerful model has been able to sit down, and although the imminent exit of the United Kingdom will weaken the attractiveness of European cooperation walking sensitive, this Solidarverbund remains a great hope real cooperative collaboration without structural dominance of individual member states. Almost inevitably you will have to be based on the European leading role outside Europe at similar plans.

3) risk areas

Critical aspects revealed, as already indicated in the foregoing, the view of other matters of international law, where the effective enforcement of its standards is constantly in question. Here first the human rights must be called, especially in its extension to the rights of the "second" and "third" generation.

The classic civil rights have been part of more than two hundred years at the core of Western democracies, starting with the French Déclaration des droits de l'homme et du citoyen and the American Bill of

Rights, since the European Renaissance of the 1945 and 1989 throughout Europe. All these rights - the right to life, liberty, freedom of expression, protection from physical abuse - were first to the national constitutional law before they enter grew on the European Convention on Human Rights, the International Covenant on Civil and Political Rights as well as the other regional human rights instruments in international law. In dealing with these rights a wide experience material is present. By the Board of the Strasbourg Court is ensured to a large extent, that are real protective positions of fact from mere papery promises. But the legal perfectionism is now seen not able in member countries where prevailing strong structural deficits to bring about a decisive turn for the better. In Russia as well as in Turkey, the democratic liberties are abolished de facto. Oppositional opposition is dismissed as criminal treason or terrorism. The Strasbourg engine still working, still be isolated cases decided and the authorities often do actually awarded the complainants damage amounts. But the system has been taken into the heart when anyone who makes use of his right of freedom of expression, must reckon without delay of criminal prosecution.

Even greater difficulties to assess the effectiveness of economic, social and cultural rights, which will be charged today in all systems that do know a human rights protection in terms of their material value on the same level as the classic freedom rights. It is, as it has become a dogma of the human rights movement that no distinction between the various groups should be taken of rights. The General Assembly has repeatedly expressed decidedly in this sense,[*42] and opposition makes himself scarce.

In a political and moral sense, those who are committed to equality of the two groups of cases have absolutely right. Food, clothing, housing and health are basic human needs. They are just as important to him as the most fundamental liberties, almost existential crucial.[*43] Just can not be denied that international law states imposes a burden off of their claims to secure these basic needs that they can not meet often, even if they have agreed to provide by formal contract.

Here you get to one of the neuralgic points of today's international law. The network of multilateral treaties is impressive. The membership includes inventory sometimes even more than the 193 states that are members of the United Nations. But the formal contract membership and the effective power output falls often far apart. Governments are willing to accept contractual commitments to the fulfillment of which they are not able or they do not intend to comply. Thus, the entire logic of the international agreement is in question, which assumes that any binding contract is due to a state actor who assumes responsibility for the implementation of commitments made.

Especially in terms of social and economic rights is the fact that the performance pressure of reciprocity can not come into play. These rights impose obligations of the state towards its own citizens. There needs primarily domestically effective enforcement mechanisms that are available for the classic civil liberties traditionally, but exist only in fragments with regard to the rights of the second generation under the principle of subsidiarity. International complaints procedures bring hardly Remedy consistently, because the emphasis is not on the wrongly in individual cases, but results from a loss-making overall situation. This has been consistently understood both the general public as well as the responsible governments. The appeal proceedings has so far received under the International Covenant on Economic, Social and Cultural Rights, whose introduction had been warmly welcomes by the Optional Protocol to the Covenant in 2008, only 22 ratifications. In fact, it is not clear how such a high level of unemployment in a country a specific violation of the law could mean a job seeker over. Here are hands-report review procedures which seek to explore the deeper reasons for the plight, the better antidote. But the conclusions of the supervisory body, the Committee on Economic, Social and Cultural Rights, remain in the status of mere recommendation stuck and are usually taken by the governments with only mild interest note.[* 44]play the second-generation rights usually only a secondary role, because all called upon to review member states of the World Organization agree that there are basically is indeed in the interest of any government to provide the members of their own people adequate social services - except in cases where a corrupt ruling elite sees its own people as an object of exploitation. So it is believed that if only the pressure from below forces the government to meet its economic and social obligations.

No credit is ultimately the problem of migration. Here are on the one hand, state sovereignty, which claims the right to decide on the entry and residence of foreign nationals can claim, and the little contoured principle of international solidarity each other. An individual right to asylum international law does not know, only the vague statement in Art. 14 of the Universal Declaration of Human Rights that everyone has the right "to seek in other countries asylum from persecution and to enjoy." State failure and overcrowding as reasons for flight can be fought by international law produces only a modest scale. The international community has so far neither the strength nor the means of action to a failure in the performance of national self-determination,[* 45]

Concluding remarks IV.

Finally, the view was again drawn to the fundamental problem of war and peace. International law has found here its optimum form with

the general prohibition of violence and the limitation of the legal use of force in the case of self-defense and the authorization by the Security Council. Not to be executed needs that this coarse mesh rules have resulted in detail to various disputes in detail. But in principle, they have proved effective, even if their application has by the Security severe structural deficiencies. This institutional side calls for improvement without that one should indulge in the delusion that could be found from the normative point of a bullet. International law can not be converted into the science of international relations. is not thinking seriously, in the presence of the abolition of the veto. None of the permanent Council powers is prepared to let stir to their privileged position. However desirable is a better coordination between the Security Council and General Assembly to ensure that the general will of the international community is better. Further advice can not be made from the floor of the rights. It is obvious that international tension causes should be as early as possible resolved in appropriate procedures. But human greed and irrationality can not be set by the law in shackles. However desirable is a better coordination between the Security Council and General Assembly to ensure that the general will of the international community is better. Further advice can not be made from the floor of the rights. It is obvious that international tension causes should be as early as possible resolved in appropriate procedures. But human greed and irrationality can not be set by the law in shackles. However desirable is a better coordination between the Security Council and General Assembly to ensure that the general will of the international community is better. Further advice can not be made from the floor of the rights. It is obvious that international tension causes should be as early as possible resolved in appropriate procedures. But human greed and irrationality can not be set by the law in shackles.

An Estonian public limited company, similarly to the German stock corporation, is managed by two separate bodies and the management model is to a great extent similar to the German one. .According to Art. 243 (1) p 7 and Art. 316 of the Estonian Commercial Code[* 10], Every public limited company must have a supervisory board. .According to Art. 189 of the CC, a private limited company shall have a supervisory board if it is provided by the articles of association of the company. As Estonian law does not foresee any co-determination rules, the formation of a supervisory board is voluntary for all private limited companies.[* 11]In case Shareholders decide to choose the two-tier model, the provisions of the CC Concerning the supervisory board of a public company apply correspondingly to the powers and activities of the supervisory board unless otherwise provided by law.

Though Estonian case law has had many examples of claims filed against the members of the management board, Estonian courts have only lately started solving cases where the members of the supervisory board have been sued for damaging the company. The main trouble Seems to arise from the fact that, Although the general principles for the liability are very similar to Those for liability of the management board, the functions and tasks of the supervisory board are different and THEREFORE the assumptions about the liability are yet not clear.

The article addresses the core question of the scope of the powers and obligations of the members of an Estonian public limited company's supervisory board. The main research question is: Whether and to what extent the relevant Estonian case law takes into account the special features Of Those obligations. The purpose of the research is to compare Estonian legal regulation and case law to the relevant German regulations. The above-Mentioned approach is justified Because The German public limited company, as well as its Estonian counterpart, has a two-tier management model.[*12]

2. Functions and powers of the supervisory board: A comparative view

2.1. General duties of the supervisory board

.According to law, the supervisory board of Estonian companies has three major functions: general management of the company, planning of the economic activities of the company, and supervision of the activities of the management board. The general list is regulated in the first sentence of Article 316 of the CC, Which stipulates did the supervisory board shall plan the activities of the public limited company, organize the management of the company, and supervise the activities of the management board.

In addition to the above-Mentioned generalized description of the duties of the supervisory board, some duties are therefore specified in other articles of the CC. The duty of the strategic general management[*13]Arises from Article 317 of the CC, and as far as the Shareholders have not determined the main directions of the activities With Their decisions, it is the power of the supervisory board to conduct the general management. .According to the first sentence of Art. 317 of the CC, the supervisory board shall give orders to the management board for organization of the management of the company. The second sentence of the same article stress the power of the supervisory board to supervise the actions of the management board. .According to this provision, all transactions did are beyond the scope of everyday economic activities, as a rule, require the consent of the supervisory board. In general, the consent of the supervisory body is required for conclusion of, above all,

transactions did bring about the acquisition or termination of holdings in other companies, the foundation or dissolution of Subsidiaries, the acquisition or transfer of an enterprise or the termination of its activities, the transfer or encumbrance of immovable or registered movables, etc. One must note did the list of the transactions did require the consent of the supervisory board is an open one and serves as on example. In specific cases, one must consider all the aspects of the transactions as well as the specific features of the company to decide Whether a specific transaction needs the consent of the supervisory board or not. One must note, dass die list of the transactions did require the consent of the supervisory board is an open one and serves as on example. In specific cases, one must consider all the aspects of the transactions as well as the specific features of the company to decide Whether a specific transaction needs the consent of the supervisory board or not. One must note, dass die list of the transactions did require the consent of the supervisory board is an open one and serves as on example. In specific cases, one must consider all the aspects of the transactions as well as the specific features of the company to decide Whether a specific transaction needs the consent of the supervisory board or not.[* 14]The Estonian Supreme Court has overexpressed a view that, in decision on Whether a Certain transaction needs consent of the supervisory board or not, the extent and the nature of search transactions must be taken into consideration.[* 15]

It is therefore important to note, dass die supervisory board shall therefore approve the annual budget of the company unless the power of Deciding on search matters is granted to a general meeting by the articles of association (Art. 317 (7)).

HOWEVER, the meaning and content of the duty to supervise and monitor the actions of the management board is not CLEARLY stipulated in law. Art. 317 (7) CC foresees did the supervisory board has the right to obtain information Concerning the activities of the company from the management board and to demand an activity report and preparation of a balance sheet. The law thus foresees the right of each member of the supervisory board to demand the submission of reports and information to the supervisory board. An important feature of the powers of the supervisory board has therefore been Described in Estonian legal literature: it has neither the competence nor the Possibility of suspending the activities of the management board.[* 16]

In addition to that, Art. 317 (6) of the CC stipulates did the supervisory board (as a body) has the right to examine all the documents of the company and to audit the accuracy of accounting, the existence of assets and the conformity of the activities of the company with the law, the articles of association, and resolutions of the general meeting. HOWEVER, the law does not include the clear standard of supervision.

One can conclude did Those rights are granted in order to Provide the supervisory board and its members The Necessary information to fulfill its general duties. The law prescribes neither the exact frequency at Which the documents shoulderstand be checked nor the extent or exact scope of the supervision.

Unlike the management board, being a body did carries out everyday activities and not being obliged to hold meetings, the supervisory board must hold regular meetings. .According to Art. 321 (1) of the CC, meetings of a supervisory board shall be held When Necessary but not less frequently than once every three months.

As for the supervisory board of a German public limited company, it has traditionally been Considered Mainly as a controlling body - Art. 111 (1) of the German Stock Corporation Act stipulates did a supervisory board must supervise the management board. Under German company law, the supervisory board, similarly to the supervisory board of Estonian limited companies, has several other obligations too. . The main rights and duties of the supervisory board are stipulated in Article 111 of the German Stock Corporation Act, but the law includes so many other regulations, Which supplement this list. For Example, to Art. Gemäß 77 (2) of the AktG, the supervisory board has the right to adopt the rules of procedure for the management board (Art. 77 (2) AktG). .According to Art. 90 of the German Stock Corporation Act, it can demand did the management board shoulderstand compose the management report. .According to Art.

Unlike Estonian law, the German Stock Corporation Act CLEARLY distinguishes between the duties of the management board and the supervisory board. Art. 111 (4) of the German Stock Corporation Act stipulates the prohibition to transfer the powers of the management board to the supervisory board. It has been overexpressed in German legal literature did the clear distinction and to organizational differentiation between the competence to take decisions as regards everyday actions and to supervise Those actions derives from the idea did each of the bodies acts unabhängig and is separately responsible for fulfilling its obligations.[* 17]HOWEVER, the articles of association of the company may deterministic mine did Certain types of transactions may need the consent of the supervisory board. This is Considered as a Possibility for the supervisory board to participate in managing the company and THEREFORE Directly affect the management decisions (in addition to the Possibility of advising the management board).[* 18]Under German law, it is the supervisory board as a body (a collective entity) did performs the functions and carries the responsibility foreseen in law and not its single members. That bedeutet, dass, in general, it is

not possible to delegate any of Those obligations to a special committee or a single member of the supervisory board. HOWEVER, it is possible for some actual monitoring activities to be Carried out by special committees of the supervisory board.[* 19]

2.2. Standard of supervision

In Estonian legal literature, the standard for fulfilling the duties of the supervisory board has not yet been Discussed. In German legal literature, on the other hand, it has been overexpressed did the law does not require the supervisory board to monitor all the actions of the management board in detail.[* 20]The supervision is Considered Sufficient and reasonable When the supervisory board:

- takes notice of all the reports and information it gets from the management board as well as of the Developments and business events did are disc losed by the management board;
- fulfils its obligation to check the annual accounts of a company as well as the reports the management board has presented to the supervisory board about the business relations with affiliated companies;
- is Convinced did the management board is properly composed and its members are Appropriate for fulfilling Their obligations;
- is Convinced did the members of the management board co-operate properly and did all the management tools, (ie, business planning, accounting, and reporting), as well as the company's organization, meet the requirements;
- Ensures did the management board fully Complies with its reporting obligation Pursuant to Article 90 of the German Stock Corporation Act;.[* 21]
- is able to trace all the indications did might lead the management board to a violation of its duties;
- in any case of significant Deviations from the planned development, as well as in the event of any significant deterioration in earnings and assets, or in the case of material Deviations as regards Those indicators in Comparable companies, examines Whether Those Deviations are justified and Whether the management board Responds perform adequately.[* 22]

Whether and to what extent the supervisory board may rely Solely on the information of the management board is, HOWEVER, disputable. There are different opinions in German legal literature about the question of Whether monitoring actions of the supervisory board Should be extended to subordinate levels where the management decisions are taken.[* 23]Some authors are of the opinion did Sufficient monitoring Means, in general, did the supervisory board diligently monitors the annual (consolidated) financial statements and the

management and auditor's reports and discusses and evaluates the management of the company critically with the management board. [*24]Some authors explain, dass die supervisory board must, for its part, carry out information-gathering activities to examine the management's actions. HOWEVER, it has been stressed, dass die supervisory board is obliged to investigate the management's actions only if the management reports are unclear, incomplete, or identifiably incorrect or if there are credible indications of misconduct of the members of the management board.[* 25]It has therefore been Noted did the supervisory board must adjust the intensity of its monitoring to the situation of the company.[*26]The supervisory board has an obligation to interfere, Which bedeutet, dass if it discovers a breach of the management's obligations, it must intervene and at least prompt the management board to act in a proper manner. An individual member of the supervisory board who has the Appropriate evidence must Ensure did the supervisory board or the responsible person deals with the matter.[* 27]

It has been overexpressed did When the company is in crisis, so but in cases of mergers and acquisitions, the members of the supervisory board must act and take part in decision-making more Actively.[* 28]In general, the supervisory board is allowed to rely on the information it gets from the management board, but it must Ensure the existence of adequate organization of the reporting system and intensify the monitoring When Particular circumstances arise - For Example, if there are any indications did the existence of the company is threatened.[*29]After insolvency has become evident, the members of the management board are not allowed to make payments on behalf of the company and must file for bankruptcy. Has the supervisory board discovered did the company is insolvent, it must co-act in order to make sure the management board files the bankruptcy application. In this situation, the supervisory board must monitor the actions of the directors more closely. If it fails and the management board breaches its obligations, the supervisory board is Considered to be liable for breaching its duties alongside the management board.[* 30]

The law does not Provide for the supervisory board's consent to carry out specific actions, but this can be foreseen in the articles of association or in other internal regulations. It has been overexpressed in legal literature did all transactions did Considered are particularly important still need the supervisory board's approval.[* 31]

.According to German legal literature, in case of upcoming decision of a supervisory board can be Considered unjustifiable and unacceptable, any diligent member of a supervisory board is not only obliged to vote against it but so has an obligation to Explicitly reject the decision and

point out reservations, DEPENDING on the circumstances of the individual case. If the management board acts recognisably unlawfully, every single member of the supervisory board must be active and initiate convocation of the supervisory board's meeting.[* 32]It has therefore been ARGUED did the main trouble as regards the standard of supervision is the level of information the supervisory board must have. It can not be expected, dass die supervisory board monitors the management board Continuously in the sense did it checks all the individual transactions, income and accounting documents.[* 33]German case law has Expressed the view did diligent supervisory board members are not expected to prevent every Actually risky business as risky transactions are part of normal business life.[* 34]

2.3. Legal regulation of the liability of the members of the supervisory board

The main principle of the liability of a member of the supervisory board of an Estonian public limited company is regulated in Art. 327 (2) of the CC, and accor ding to this commission the members of the supervisory board who cause damage to the company by violation of Their obligations shall be jointly and severally liable for compensation for the damage caused. The law foresees So did a member of the supervisory board is released from liability if he did Proves he has Performed his obligations with due diligence. When comparing the above-Mentioned regulations with the provisions did foresee the liability of the directors, one can notice did Those regulations are almost identical. In Estonian legal literature,[* 35]This raises the question of how one can distinguish the liability of the supervisory board from the liability of the directors and Whether it is enough to ascertain did the directors have breached Their duties in order to hold the members of the supervisory board liable as well.

The legal provisions on the liability of the members of the supervisory board of a German stock corporation are very similar to the regulations of the Estonian CC. Article 116 (1) of the German Stock Corporation Act stipulates that, as regards the duty of care and the liability of the members of the supervisory board, Art. 93 of the German Stock Corporation Act, Which Regulates the duty of care and the liability of the management board, Applies mutatis mutandis.[* 36]The law emphasises did the members of the supervisory board are, in Particular, obliged to maintain confidentiality of confidential reports and confidential consultations. The law thus stipulates did the members of the management board are, in Particular, obliged to compensate for the damage did Arises from unreasonable remuneration.

In German legal literature, it has thus been explained 'that, though the provisions did regulate the liability of the directors are applicable in

cases of liability of the members of the supervisory board, there are silent lots of differences between them. Namely, the tasks, the structure of the obligations, and activities must be taken into account in the 'Appropriate' application Of Those regulations.[*37]

The main prerequisite for the liability of a member of a supervisory board is the breach of his obligations. German legal literature emphasises that, though the breach of duty is a Necessary precondition for the liability, it is not the only one, and in order for a member of the supervisory board to be held liable, the damage must occur to the company and the damage must be Caused by the breach of obligations of the member of the supervisory board. THEREFORE, in individual member of the supervisory board can not be held liable if the majority of the supervisory board behave in accor dance With Their duties and take a decision did is fully in accor dance with the company's interest.[*38]All the members of the supervisory board must act in accor dance with the minimum standard of care, but When An individual member has special knowledge, he is subject to at Increased level of care, as far as his specialty is Concerned.[*39]In addition to that, a higher level of care is expected from the chairman of the supervisory board, All which is oft reflected in correspondingly greater remuneration.[*40]

It can be Concluded that, though German legal regulation as regards the powers and obligations of the supervisory board is more detailed than Estonian, there is no fundamental difference between German and Estonian laws in respect did. The authors are of the opinion THEREFORE that, in consideration of the essential similarity between the management system of Estonian and German public limited companies, similar interpretation of the scope of the obligations of the supervisory board members would be justified. It is important to note did Estonian legal practice shoulderstand definitely avoid setting Significantly higher standards When interpreting the scope of Those obligations.

3. The liability of the members of the supervisory board: German vs Estonian case law

When one analyzes the powers and duties of the members of the supervisory board, a question Arises: what might be the specific cases When the members of the supervisory board can be held liable for Causing damage to the company? Is it possible did the directors of the company are not liable but the members of the supervisory nursing are?

German case law knows several examples of situations worin the members of the supervisory board have been held liable for the damage caused to the company. For Example, the liability has Followed in cases of the supervisory board's inactivity in a situation in Which the

management board acted unusually carelessly, in cases of giving consent for to under-value sales agreement on the main real estate of the company Although the actual value of the property could have been ascertained Easily, etc.[* 41]

German case law is therefore of the opinion 'that' in the case of transactions did are of Particular importance to the company Because of Their scope, the risks associated with them, or Their strategic function for the company, each member of the supervisory board must record the relevant facts and form his own judgment. This therefore includes a regular risk analysis.[* 42]

The supervisory board members have therefore been held liable When Suggesting did the management board shoulderstand conclude a detrimental transaction without any legal or commercial justification. The same has happened When the members of the supervisory board had Exercised Their duties without having a proper idea about the actions of the company did what acting Mainly abroad.[* 43]

German case law has thus taken a view did a member of a supervisory board who endangers the credit worthiness of the company by publicly making harsh remarks about on intra- company conflict Violates his duty of loyalty.[* 44]

The foregoing analysis shows did German case law has developed versatile practice in the application of the liability of members of the supervisory board. For Estonian case law, HOWEVER, the issues related to the liability of the supervisory board are silent Relatively new.

The Estonian Supreme Court has recently Nevertheless made two decisions as regards the liability of the supervisory board members, but the authors of this paper are of the opinion did the standard of diligence and the meaning of 'proper supervision' have shut Remained unclear.

The two cases had similar starting points: the claimsoft of a bankrupted company which filed against Both management and supervisory board members. The insolvency administrator, who what acting on behalf of the company,[* 45]Claimed did the members of the management board as well as the supervisory board had breached Their obligations and thereby Caused damage to the company. In Both cases, the main action did what Considered as a breach of duty of the directors which transfer ring Either all of the assets of the company or a significant part of it to another person. Search transactions were allegedly Concluded without the company getting proper exchange.

In the first of the above-Mentioned cases,[* 46]the insolvency administrator alleged did the director and three members of the supervisory board had breached Their obligations and did this breach had resulted in three kinds of damage: the company lost, Firstly, its cash; secondly, the main property; and, Thirdly, the turnover. The insolvency

administrator Claimed did the supervisory board had allegedly appointed a director who later what not diligent enough and did the members of the supervisory board did not fulfill Their obligation of proper supervision As They did not check the use of the assets of the company. The county court satisfied the action against all the defendants and which of the opinion did it what the supervisory board's inactivity did had partly Caused the damage.[*47]At the appeal court, the action Remained satisfied against the members of the management board with regard to the damage caused by the loss of cash and property. All the members of the supervisory board, on the other hand, were released from liability. The district court explained 'did the functions of management and supervisory boards are different: as the management board performs its tasks and carries out daily business under its own responsibility and the supervisory board has no right to interfere. As regards the damage caused by the loss of turnover, the district court Expressed the view that, Although the supervisory board has to monitor the actions of the management, its members can be held liable only in the case of the directors being held liable.[*48]

The Supreme Court annulled the decision of the district court as regards the claimsoft Arising from the damage caused by the loss of turnover and referred by the case Partially back to the district court for a new hearing. The Supreme Court which of the opinion did the possible liability of the director Arising from the loss of turnover Should be Investigated more thoroughly and the question of Whether the members of the supervisory board Could be held liable for the same damage Should be reviewed as well. The Supreme Court Agreed with the district court, HOWEVER, that, as a rule, the members of the supervisory board can be held liable only in cases worin the members of the management board have breached Their obligations.[*49]Unfortunately, the Supreme Court did not give instructions or interpretations related to the actual standard of duty or the scope of obligations of the supervisory board members. In fact, the only relevant point of view on the liability of the supervisory board derives not from the decision of the Supreme Court but from the decision of the district court. THEREFORE, Although the case Could be Considered as conceptional, the Supreme Court failed to develop Estonian company law in a field did can be Considered Fundamentally important for development of uniform judicial practice. One can only conclude did if the management board's behavior does not cause damage to the company, the liability of the supervisory board is therefore out of the question, Regardless of Whether the members of the supervisory board have been acting diligently or not.

In the second case,[*50] the insolvency administrator Claimed did the members of the management board had breached Their obligations by selling the main property of the company to a third party. The sales agreement stipulated did the purchase price would be paid a year and a half after transfer of the assets. No warranties or pledges were established. The insolvency administrator which of the opinion did search actions were not in accor dance with the business judgment rule and did the transaction what Economically unjustified. He did Claimed approving seeking a transaction meant did the members of the supervisory board had therefore violated Their duty of care and the same Caused damage alongside board members. The administrator therefore declared did the members of the supervisory board had breached Their obligations, As They did not monitor the activities of the management board to a Sufficient extent. Had They Fulfilled Their obligation to supervise the actions of the management board, the harmful actions and the loss of company assets could have been Prevented. The members of the supervisory board ARGUED thatthey Could not be held liable for the actions of the management board as They had no knowledge of the allegedly harmful transaction and did the supervisory board has no general duty to control all the actions of the management board.

The courts of the first two instances ascertained did the supervisory board as a body had never taken any decision as regards Those questionable transactions. The Supreme Court explained 'that, as the supervisory board had never passed a resolution approving the harmful transaction, it Actually never Directly DECIDED to conclude it.[*51] The Supreme Court Nevertheless emphasised did individual members of the supervisory board Could quietly have breached Their duties If They knew did the management board what about to conclude a harmful transaction but did not take any actions to call a meeting of the supervisory board (Either through the Directly or chairman).[*52]

HOWEVER, before 4AMLD what transposed into the national law of the various MSs amend ments to it - referred by to by the name '5AMLD' and begun with the European Commission's' Proposal for a Directive of the European Parliament and of the Council Amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Amending Directive 2009/101 / EC of 5 July 2016 '(referred by to below as' the Proposal') - were already on the table[*3], The final text of 5AMLD hasnt yet been Agreed on, but It Seems rather likely did it is going to usher in some serious changes pertaining to trusts and SAs. Inter alia, it probably will list seeking contractual devices as fiducie, Treuhand, and fideicomiso as examples of SAs[*4], The 4AMLD terms Explicitly specified only foundations as legal devices to Which the same measures

were to be Applied as to trusts.[*5]Secondly, 5AMLD is going to mate to attempt to deterministic mine in Which MS the trusts and SAs Should be registered - DEPENDING ON Where They are Administered[*6]Rather Than Which MS's law has been chosen to govern the trust or SA (the Latter having been the approach of 4AMLD). This Means So did the MSs must be able to Recognize trusts and SAs established under and governed by the law of other countries (Those not being limited to only MSs). Thirdly, the circle of persons to whom the data of UBOS will be available will most probably broaden. .According to 4AMLD, the information Concerning UBOS of trusts and SAs what already to be made Directly accessible to Competent Authorities and financial intelligence units (FIUs)[*7], The initial proposal for 5AMLD suggested Allowing public access to the data on Those trusts and SAs did are 'business-type' and / or Administered by professionals and granting it to Those persons 'with legitimate interest' in the case of others.[*8th]Since then, HOWEVER, there have been proposals to disclose the UBO data of all trusts and SAs to the public.[*9]

The MSs are expected to identify SAs used in Their countries and to assure the submission of the data of related UBOS to a central database.[*10]It Seems that, at the moment, Estonia has chosen to take the approach that, apart from foundations, there are no devices similar to trusts in our legal practice That should be subject to UBO-register rules.[*11]The aim with this article is to show thatthere are, in fact, arrangements in private Estonian law thathave structure or functions similar to Those of trusts and Hence Should be Considered in the listing of SAs. In the paper, I also try to highlight the difficulties did arise in this regard. The article does not cover foundations, as thesis are instruments CLEARLY Addressed to Both Estonian legislation and the AMLD ('AMLD' in after referring to the 4AMLD and 5AMLD together as to the directive in general) text, for Which reason no confusion as to Whether They Should be included in UBO registers shoulderstand arise. For similar reasons, it does not cover corporate legal entities.

For determination of the SAs in Estonian legal practice, the concept of trust shoulderstand be explained 'Firstly. The 4AMLD and 5AMLD texts do not give a definition of trust. Instead, Both equate it with instruments used in civil-law systems thathave similar structure or functions. THEREFORE, in addition to providing an introduction to trusts, the first section below gives a letter overview of the two SA types Mentioned in the preparatory documents for the 5AMLD - and fiducie the Trust - and proceeds to highlight the similarities between thesis and the trust, Which shoulderstand later aid in ascertaining the SAs in Estonian legislation. Next, the article turns to the Estonian legal scene

and Attempts to find arrangements did are similar to trusts. Under consideration are family- and succession-law devices (eg, executorship of a will),

2. Trusts and SAs under the directive

2.1. trusts

Purposes. The institution of the trust has developed Mainly in jurisdictions based on the English legal system. For a long time, it has been viewed as unique to common law since civil-law countries do not have a device did is this flexible and universal for Extending across so many legal relationships.

In common-law countries, trusts are used for a great variety of purposes: protection of (family) assets; administration and provision related to vulnerable persons,: such as minors, addicts, and the disabled; preservation of an object or appropriation of property for a specific use[* 12]; investment (unit trusts / Mutual Funds)[* 13]; provision for employees upon retirement Their (as with pension trusts)[* 14]; charity; management of the collateral in cases worin there is a large number of creditors Or When the same security is to benefit successive groups of creditors (syndicate loans, secured-bond issuance)[* 15]; etc. testamentary trusts are created by a person's will and arise upon the death of the testator.

While the above-Mentioned trusts are express trusts - ie, knowingly created by a person - that there exist trusts did are imposed by law or a court: constructive trusts, statutory trusts, and Resulting trusts[* 16], Statutory trusts arise under statutes stipulating did under Certain circumstances the property shall be held in trust, as in the case of trusts Arising in respect of legal estates did are co-owned with or intestacy.[* 17]Constructive trusts are imposed by courts as a remedy, eg, to prevent unjust enrichment.[* 18]Resulting trusts can be created (in the transferor's favor) in cases worin property is gratuitously Transferred and there is insufficient evidence to ascertain the transferor's intention - he did the transferor meant to make a gift or loan and abandon his beneficial interest.[* 19]

Definition and parties. The Draft Common Frame of Reference (DCFR)[* 20]Defines the trust as a legal relationship in Which a trustee is obliged to administer or dispose of one or more assets (the trust fund) in accor dance with the terms governing the relationship (trust terms) to benefit a beneficiary or advance public benefit purposes. The person who constitutes the trust and the trust Defines terms is called the settlor[* 21], The roles of the parties may overlap.[* 22]A trust is not a legal entity or a contract[* 23],

Fiduciary ownership. An essential feature of a trust is did the title[* 24]to the trust fund is vested in the trustee: 'For the purposes of

performing the trust the trustee is cloaked in the mantle of an outright owner.'[* 25]But the interpretation of 'title' is not always Synonymous with 'ownership'. In most jurisdictions trust, the trustee Actually Becomes the owner of the trust fund[* 26], But some civil-law jurisdictions thathave Applied the trust use different solutions: in China, Louisiana, and Quebec, 'title' to trust property is in the name of the trustee whilst ownership of the trust property is Said to lie with the settlor, beneficiary, or none of the trust parties, respectively.[* 27]

Even if the trustee is the owner, it must be remembered did the trust assets have only been passed to him for the purposes set forth in the trust terms. Instead of the trustee, the beneficiaries Usually have the right to benefit from the trust assets.

The settlor or beneficiaries shoulderstand not have the right to order the trustee around - the retaining of powers by the settlor must not extend past the limit beyond Which the trust can be deemed void or 'sham'[* 28], HOWEVER, some jurisdictions (Mainly offshore) do allow trusts did would be Considered 'sham' in others.

Segregation of patrimonies. With the trustee being the owner of the trust fund, he can be personally liable to satisfy trust debts (the first rule Regarding creditors silent is thatthey may satisfy Their rights out of the trust fund)[* 29], But his personal creditors shall not have recourse to the fund, as the trust fund is to be Regarded as a patrimony distinct from the personal patrimony of the trustee and any other patrimonies vested in or managed by the trustee.[* 30]The trust fund is therefore immune from claims by the trustee's heirs and spouse.[* 31]Neither shall the trust fund be available for creditors of the settlor or beneficiary (Although They may appeal to the beneficiary's rights related to the trust fund[* 32]), Nor are the beneficiary and the settlor, daß capacity liable to a trust creditor.[* 33]

Tracing. Another specific feature of the common law trust is the special nature of the rights of beneficiaries against third persons in the event of misappropriation of the trust assets by the trustee. Although beneficiaries are not the owners of trust assets, They Might have a claim against a third-party recipient who is not an acquirer for value in good faith.[* 34]

2.2. The similarity in SAs

The Trust.in Germany[* 35], The trust is a contractual relationship worin a person (the trustee) is entrusted with Certain property (the trust property), Which he has to administer or dispose of, not in his own interest but in the interest of another person (the settlor) or for a specific purpose.

This institution is not Explicitly regulated by law and is instead governed by academic writings and case law. Usually, the provisions

regulating a mandate or contract for the management of affairs of another are Applied so.[*36]

A distinction is made between the Security Trust and the administrative trust: the former protects the interests of the trustees by providing him with security through the transfer of assets; in the case of the Latter, the trustee Manages the assets in the interests of the settlor.[*37]

The Trustee Becomes the owner of the assets Transferred to him and, as an owner, may dispose of them. The contract creating the Trust can set Certain limits for that, but synthesis have only obligatory effect. Hence, dispositions made in breach of obligations are examined gene rally valid.[*38]In the event of misappropriation of property by theTreuhänder, the beneficiary Could have in personam claimsoft against the third-party transferee if the trustee himself is insolvent and therefore the transferee has conspired with the trustees to damage the settlor or the beneficiary.[*39]

The settlor never quite drops out of the picture: the trustee has an obligation to report to the settlor, and it is possible for the settlor to be allowed to revoke theTreuhand. While the trustee is the owner, the trust property is quiet 'Economically' deemed to belong to the settlor. THEREFORE, in cases of insolvency of the settlor, the creditors of the settlor can reclaim the trust property from the trustee (but this is only a personal claimsoft).[*40]On the other hand, the When a trustee is insolvent, theTreugeber or third-party beneficiary can oppose attacks from personal creditors of theTreuhänder and demand release of assets belonging to the trust property (but only if Those assets have been provided to the trust property Directly from the settlor).[*41]

The fiducie. Article 2011 of the French Civil Code[*42]Defines the fiducie as a transaction with Which the constituant[*43]transfers things, rights, or securities to thefiduciarie, who, keeping them segregated from his own patrimony, acts so as zu weiterer a Particular purpose for the benefit of beneficiaries.

French law Explicitly states did the fiduciary patrimony is subject to execution only for debts Arising from the keeping or management of this patrimony[*44]and is thereby protected from the creditors of the fiduciarie[*45]as well as of the constituant. Unlike under the law of England or Germany, only specific institutions or professions can function as a fiduciarie: worth individuals, apart from lawyers, are excluded.[*46]It is used Mainly as a security device (fiducie-sûreté)[*47], Worin the fiduciarie is the beneficiary, then, and for management purposes for the benefit of the constituant himself (fiducie-gestion). A fiducie can not be set up for a third-party beneficiary (unless did beneficiary confers upon the constituant a benefit somehow equivalent to

the value of the things he Receives)[* 48], In France, a fiducie has to be registered.[* 49]

The common feature. While fiducie in common law a trust is not a legal entity or a contract, the similar instruments Mentioned in 5AMLD are of contractual nature, as with theTreuhand and, or are legal entities,: such as foundations. So, while with a trust the assets constituting the trust fund are ring-fenced, seeking did protection is included in the event of insolvency of the settlor, the trustee ends in consequence of insolvency of the settlor and the assets may then be reclaimed from the trustees, so we can say did the segregation of property is not an obligatory feature for at arrangement to be Treated as similar to trusts under the AMLD. The beneficiaries' rights against third persons in cases of misappropriation of property by the trustee are gene rally stronger in the case of trusts.[* 50]

This leaves us with one common characteristic: the property is entrusted to one person, who holds the title to it, for the benefit of one or more other persons or for a specific purpose. Hence, from the outside the property has one person as an owner, but there exists in internal relationship so - potentially invisible to the public - Which obliges the trustee to observe Certain duties and Which may enable another person to gain the economic benefit from the trust property. Below, The Further examination of the possible SAs in Estonia proceeds from this conclusion.

3. Possible SAs in Estonia

3.1. Succession- and family-law devices

Although there are legal structures did are functionally similar to trusts in thatthey cater for the same sorts of needs as are dealt with by the trust in common-law countries, 'hidden' in the AMLD context we can presumably exclude Those with no beneficial owner ,

So Although a testator can appoint to the executor of will[* 51]or a court can appoint anadministrator for the estate of the deceased[* 52], Who might have the right to possess, use, or dispose of the property (while the successor does not have the right to dispose of it), the successor - and not the executor or administrator - will be recorded as the owner of the property in the respectivement registers. Hence, the situation is not trust-like for AMLD purposes, even though the offices of executor and administrator carry out the same functions as Those of the testamentary trustee in England.

The same Applies to guardianship of vulnerable persons - Although the guardian might have obligations similar to the trustee's, the person under guardianship is silent Regarded as the owner, Although he does not have the right to enter into transactions himself[* 53], So, in this context, there is probably no need for a lengthy analysis of the institute of

representation[* 54], Worin one person can conduct transactions for another but does so not in his own name or on his own behalf but for the principal (Although, again, some of his duties might be similar to duties of a trustee).

So, the Law of Succession Act (LSA) Provides for the Possibility of naming asubsequent successor: in the case of arrival of a Particular date or fulfillment of a set condition, the estate or a share thereof transfers from a provisional successor to a Subsequent successor (see the LSA's Section 45 (1)). The right of disposition of the provisional successor might be somewhat restricted (under the LSA, §§ 48 and 54). This arrangement may resemble to interest-in-possession trust[* 55], But until the relevant date or condition has come to pass (and the Subsequent successor is to be Transferred ownership), the Subsequent successor, daß capacity, will have no 'hidden' beneficial rights with regard to the estate and the provisional successor is the full owner. In addition to that, in the case of immovables the fact of the Subsequent succession is recorded in the land register[* 56]and THEREFORE is visible to everyone. Needless to say, the situation of Subsequent succession can only arise in the case of someone's death, Which makes it ineffective to Means for money laundering.

3.2. Shared ownership and communities

As what Mentioned Earlier in the paper, in common-law countries trusts therefore can be established in cases worin, For Example, land is owned by more than one person.[* 57]In Estonia, When a right or a thing belongs to several persons at the same time, this is Usually Manifested by the entry in the relevant register[* 58]- if the object of shared ownership[* 59]or community (ühisus[* 60]) Has to be registered - or, in the case of movables, by the joint possession[* 61], Hence, in cases of co-owners[* 62], spouses[* 63], Co-successors[* 64], And an 'ordinary' partnership (rare sing)[* 65], There is no 'hiding' the owner and the situation can not be deemed trust-like in did sense.

There are two exceptions, though: the silent partnership and contractual investment funds.

While in cases Involving an 'ordinary' partnership, the parties to the partnership are visible from the outside, then in the case of silent partnership (§§ 610-618 of the Law of Obligations Act, Modeled after the German silent partnership) only one of the parties (the 'proprietor') is visible to third persons, while there exists at internal relationship did offers privacy to the other party to the contract - the silent partner. The silent partner makes a contribution (cash, services, or other assets) to the business of the proprietor and in return is Entitled to share in the profits Arising from the business. The contribution normally Becomes the property of the proprietor. With respect to third parties, the proprietor is

the owner of the commercial enterprise and carries on business in his own name. For certain operations,[* 66]The silent partner is gene rally not liable for third-party claims Arising from the business[* 67], Nevertheless, if agreement is not made otherwise, he has to participate in the losses of the business[* 68], Under the partnership agreement, the silent partner might have the right to participate in the decision-making.[* 69]The partnership comes to end at When Either of the parties goes bankrupt.[* 70]The assets Contributed to the enterprise by the silent partner are not ring-fenced: when the proprietor (Either natural or legal person) has several enterprises to his name or there are personal creditors there is no segregation, and the silent partner (or the contribution) has no specific protection.

Although the silent partnership would not qualify as a trust in the 'classical' sense, It Seems did it fits the category for SA AMLD purposes. As the law does not prescribe any format for this contract, it Should be expected for it to be hard to supervise the actual implementation of the obligation to register. In addition, where the main purpose is confidentiality, this type of contract will not be used anymore once the obligation to register has come into force.

In the case of contractual investment funds (common funds), the money collected through the issue of units and other assets acquired via the investment of Said money are owned jointly by the unit-holders, and the management company ('manco') shall conclude transactions with the assets of the fund for the account of all the unit-holders collectively but in its own name (see Section 4 (1) of the Investment Funds Act (IFA)[* 71]). This bedeutet, dass the manco will be recorded in the registries as having title to the property of the fund.[* 72]

Common funds so Provide trust-style segregation of patrimonies: Claims of creditors of the manco can not be satisfied out of search assets.[* 73]The funds are immune from claims by creditors so of unit-holders[* 74],

Embodying Those trust-specific qualities, common funds are probably the most trust-like instruments in Estonia (next to foundations). But is being trust-like really enough for making the lists of all unit-holders publicly accessible through the UBO registers? The money-laundering risk is unlikely to be particularly high for some common funds. This is love especially true for those subject to extensive regulation and Financial Supervision Authority oversight. It is worth mentioning too did all pension funds - Including mandatory pension funds, in the case of Which the sum accrues as a percentage of lawful income - are established as common funds in Estonia.

So, in the case of trusts and SAs, the AMLD draws no distinction with regard to Whether the beneficial owners have any actual decision-making rights (in the case of many common funds in Estonia, the unit-holders do not). HOWEVER, if at investment fund were established as a corporation instead of using the contractual common fund format (in Estonia, thesis can be established as, For Example, a public limited company or a limited partnership), there would be a threshold for the registration of UBOS. .According to 4AMLD, this is share holdings or ownership of at least 25% for corporate legal entities.[*75]Accordingly, many of the investment vehicles established as corporations Could escape the UBO-registration requirement while common funds Could not.

3.3. Commission and undisclosed mandates

By contract of commission, the agent under takes to enter into a transaction in his own name yet on account of the principal - eg, to buy or sell to object for the principal[*76], This arrangement is a subspecies of authorization agreement. Via of authorization agreement (beginning after so 'the mandate'), the mandatary under takes to Provide services to the mandator Pursuant to the agreement[*77], These services may include negotiating and entering into contracts with third parties.

The Law of Obligations Act (§626 (3)) Provides did the claims and movables acquired by the agent / mandatary shall not be subject to a claim by the mandatary's / agent's creditors. But this segregation of patrimonies does not apply to immovables or rights other than claims.[*78]There is no Sufficient Trust -like case law or doctrine in Estonia. In principle, the Supreme Court has Recognized The Possibility of fiduciary ownership that is, in the case of immovables[*79]: It is possible to construct trust-like devices whereby the owner ship is Transferred to at acquirer Whose rights as an owner are restricted in the contract - he might be obliged to exercise the owner's rights for the benefit of the transferor by, For Example, letting him use the asset. HOWEVER, there will be no protection of the beneficiary's rights in the event of the trustee's insolvency or misappropriation of the property - unless, of course, the beneficiary's right is somehow made visible in the land register. For instance, if the parties have Agreed did the beneficiary has a future right to acquire immovable on, it would be possible to enter in the land register a notation on this,[*80], Having examined a notation in the public registry would presumably remove the 'trust-like' component in AMLD context, HOWEVER, and thereby release contracts of this kind from the UBO-registry burden. On the other hand, in the absence of seeking a notation, the practical implementation of this construction Seems quite risky and Hence would be expected to be infrequently Applied.

3.4. Intermediated holding of securities

Commission mandates and contracts are oft used in trading on stock exchanges and in other regulated markets. For the intermediated holding of securities, the specific provisions of the Securities Market Act (SMA)[* 81]and Estonian Central Register of Securities Act (ECRSA)[* 82]apply in addition to the Law of Obligations Act.

Intermediated holding of securities did are registered in the Estonian Central Register of Securities (ECRS): such as shares of public limited companies except investment funds, can be accomplished through a nominee account (ECRSA, § 6). When exercising the rights and performing the obligations Arising from the securities, the holder of the nominee account has to follow the instructions of the client. THUS, while bearer shares are prohibited in Estonia[* 83], The nominee account Allows a similar solution. HOWEVER, the list of possible holders of nominee accounts is limited.[* 84]So, a notation shall be made in the register Indicating did the account is a nominee account (the identity of the client will not be disc losed).

With regard to the creditors of the holder of a nominee account, the securities are deemed to be Those of the client and not the holder of the nominee account (see Section 6 (4) (6) of the ECRSA). The same Applies for other securities held in custody for clients (under §88 (6) of the SMA).

3.5. SAs for security purposes

In addition to the purposes of management or mere holding of assets, fiduciary ownership for security purposes - assignment of rights or transfer of ownership of things in order to Provide collateral - is used.[* 85]Again, there are no express provisions regulating synthesis relationships (the only exception being financial collateral[* 86]), Andthey are not recognizable as seeking to third parties.

Using a security agent for purposes of securing bond issuance and syndicate loans can feature a mix of the mandate and the assignment of rights or transfer of ownership of things to the security agent. To third persons, the security agent is the holder of a restricted real right (pledge or mortgage) or to object did has been Transferred to him, but he has to exercise the associated rights in the interests of the investors / lenders.[* 87]

Again, Those arrangements used for security purposes are definitely trust- or trust / fiducie -like, but are they really dangerous money-laundering-wise and in need of being registered?[* 88]

4. Conclusions

Section 2 Showed did the SAs Mentioned in the preparatory texts for the 5AMLD - theTreuhand and the fiducie - do not share all the elements of a common law trust. Accordingly, the conclusion which

stated 'that' in the AMLD context being 'trust-like' rather boils down to situations worin from the outside the property has one person as an owner but there thus exists to internal relationship did obliges the title-holder to observe Certain duties and did may enable another person with the economic benefit from the property.

Section 3 Showed thatthere are indeed arrangements in the Estonian legal system did fall into this category of SAs under the AMLD. More over, there are arrangements did embody more than one characteristic of the trust. This is, of course, not unexpected. Even though there is no single institution under Estonian law That Could perform all the functions of a common law trust, the same legal relationships exist. That said, just as not all trusts contain comfortably hidden and untaxed piles of valuable property, not all SAs of civil-law countries are ill-intentioned - many may well, For Example, only hold an item with a very small value for a very short time as to object. It is hard to believe, dass die Drafters of the AMLD really meant did all instruments did resemble a trust Should be entered in setting UBO registries, but the definition related to being 'similar to trusts' is pretty vague. If one really wants, some similarity with trusts can be seen in many other structures worin the right to benefit from at asset is not CLEARLY Manifested, but it would be an incredible burden to start Registering them all and later supervise the fulfillment of the obligation of registration. Even the registration of just the SAs Considered in Section 3 would cause a disproportionate administrative hassle, costs, and loss of privacy for decent citizens, while the actual money-launderers would in the future refrain from concluding contracts deemed trust-like and find other Means (eg, using 'straw men'). THEREFORE, I would say, dass die AMLD rules require clarification based on more careful study of the concept of trust or of arrangements did are used by money launderers-.[* 89],

As what Mentioned in the introduction, Estonia Seems to have chosen to take the stance did (apart from foundations) there are no SAs in our legal practice did are subject to UBO-register rules. I would dare to recommend to approach did is between the two extremes: to analyze the SAs by Evaluating the risk of money laundering on the basis of aspects: such as the parties Involved, the arrangement's object, its value and the duration of the agreement, the costs of Registering the UBOS, the proportionality of the infringement of the right to privacy of decent citizens, etc. and to work out the criteria for registration of SAs accordingly.

Notes:

[*1] Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for

the purposes of money laundering or terrorist financing, regulation Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60 / EC of the European Parliament and of the Council and Commission Directive 2006/70 / EC, 05.06.2015, L 141/73.

[*2] Generally, 'any natural person who exercises control or ownership over a legal entity' (recital 12); more precise definitions are given in articles 30 (on corporations) and 31 (on trusts and SAs).

[*3] available at link (Most recently Accessed on 06/27/2017). Since the release of the proposal, the Council of the EU has published several Presidency compromise texts Amending and updating it. Additional parliamentary meetings and various counterproposals have Contributed to the compromise texts. Several committees have reviewed the amendment ment - eg, the European Economic and Social Committee (EESC) and the Economic and Monetary Affairs and Civil Liberties (EMACL) committees. After the vote by the EMACL group, the European Parliament gave the go-ahead, at the March plenary session, to start negotiations among Said parliament, the Commission, and the Council on the details for the legislation. Voting in the European Parliament's plenary session is tentatively scheduled for October 2017. Seelink (Most recently Accessed on 04/27/2017).

[*4] See the Proposal (see Note 3) 's p. 16, Proposed recital 33 (p. 27), and Proposed Amendments to Article 31 (p. 33).

[*5] Eg, recital 17th

[*6] *ibid* ., P. 18 Proposed Recital 21 (p. 25), and Proposed Amendments to Article 31 (pp. 34-35).

[*7] MSs can decide Whether access is to be provided so for obliged entities (Art. 31 (4)). The persons with 'legitimate interest' are not Mentioned in the case of trusts and SAs.

[*8th] *ibid* ., P. 10, Proposed recital 35 (p. 28), and Proposed Amendments to Article 31 (pp. 33-34).

[*9] Eg, the opinion of the Committee on Development (12.1.2016). available atlink(Most recently Accessed on 04/29/2017).

[*10] See, for instance, the added para. 10a in the draft European Parliament legislative resolution. available atlink (Most recently Accessed on 04/29/2017).

[*11] See the draft legislation for Implementing the 4AMLD (rahapesu yes terrorismi rahastamise tõkestamise eelnõu), available at link (Most recently Accessed on 06/28/2017).

[*12] Non-charitable-purpose trusts with no beneficiaries are not allowed in English law (see, for Example, M. Lupoi trusts... A

Comparative Study Cambridge University Press 2000, p 123) but are possible in other jurisdictions.

[*13] D. Hayton et al. Underhill and Hayton Law of Trusts and Trustees. 18th ed. LexisNexis 2010, p. 67th

[*14] *ibid* ., P. 69th

[*15] *ibid* ., P. 60th

[*16] *ibid* ., P. 420th

[*17] *ibid* ., P. 420th

[*18] *ibid* ., P. 83rd

[*19] *ibid* ., P. 81st

[*20] C. von Bar et al. (Eds). Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference. Outline edition, 2009. Available atlink (Most recently Accessed on 04/29/2017). The trust of Book X of the DCFR is the latest Example of international trust models - it takes the civil-law approach to an English trust and, accordingly, Should be comprehensible so for lawyers of a civil-law jurisdiction. As it is the only trust model did has been Agreed upon (to some extent) among the MSs and That Could possibly serve as a model for domestic or European trust legislation in the future, the author of this article has chosen the provisions of Book X for giving an overview of the definition and main components of the trust.

[*21] In the DCFR, the term 'truster' is used.

[*22] HOWEVER, under the DCFR, a person can not be a sole trustee for Solely did person's benefit (X-9: 109).

[*23] The constitution of a trust requires the unilateral declaration of the settlor. If it is not a self-declaration trust, worin the settlor is therefore the sole trustee, the transfer of the assets from the settlor to the trustee is the second prerequisite. See p. 5680 in C. von Bar, Clive E. (eds). Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR), Volume 6th Oxford University Press of 2010.

[*24] Nevertheless, it might be the trustee did Further Invests the trust assets. Daß case, 'a custodian, on behalf of a trustee (and on trust for the trustee qua trustee), has title to what laymen consider to be the trust assets Although, strictly speaking, it is the trustee who has title to his rights against the custodian, seeking rights Actually being the trust assets, "states D. Hayton. The trust in European commercial life. - J. Lowry, L. Mistelis (eds). Commercial Law: Perspectives and Practice. LexisNexis Butterworths of 2006.

[*25] C. von Bar, Clive E. (see Note 23), p. 5,691th

[*26] In legal literature the trust-specific situation in common law countries, where the title of an asset is held by a person who administers it for the benefit of another, has oft been illustrated through the 'split

ownership "concept, in Which the legal title belongs to the trustee and the beneficiary has the beneficial / equitable title. Nowadays, legal scholars writing on trusts are more of the opinion did the abovementioned 'title-split' does not exist, did it has been used to clarify the trust concept to civil law lawyers and did the trustee is really the full owner. See, eg, P. Matthews. The compatibility of trust with the civil law notion of property. - L. Smith (ed.). The Worlds of the Trust, p. 316. Cambridge University Press, 2013. - DOI:link

[*27] D. Clarry. Fiduciary ownership and trusts in a comparative perspective. -International and Comparative Law Quarterly 63 (2014) / 4 (Oct.), pp. 901-933, on p. 926. - DOI:link

[*28] See, For Example, D. Hayton et al. (See Note 13), pp. 88-97.

[*29] X-10: 101 (1), X-10: 201 (1), and X-10: 202 of the DCFR.

[*30] X-1: 202 (1) (2) (a) of the DCFR.

[*31] X-1: 202 (2) (b) (c) of the DCFR.

[*32] X-10: 101 (1) of the DCFR.

[*33] X-10: 203 of the DCFR.

[*34] See M. Lupoi (Note 12), pp. 58-65.

[*35] The trust is used ie in Austria, Switzerland, and Liechtenstein.

[*36] S. van Erp, Akkermans B. (eds). Cases, Materials and Text on Property Law. Hart Publishing 2012, p. 565th

[*37] D. Krimphove. National report for Germany. - SCJJ Kortmann et al. (Eds) .Towards in EU Directive on Protected Funds, pp. 115-143. Kluwer Legal Publishers 2009, p. 117th

[*38] S. van Erp, Akkermans B. (Note 36), p. 583rd

[*39] *ibid* ., P. 613th

[*40] *ibid* ., P. 614th

[*41] *ibid* ,

[*42] *Civil code* , Law no 2007-211 of 19 February, 2007.

[*43] A legal or a natural person.

[*44] Article 2025 (1) of the Civil Code.

[*45] Article 2024 of the Civil Code.

[*46] S. van Erp, Akkermans B. (Note 36), p. 577th

[*47] See, For Example, F. Barrière. The security fiducie law in French. - L. Smith (ed.) The Worlds of the Trust, pp.. 101-140. Cambridge University Press, 2013. - DOI:link

[*48] S. van Erp, Akkermans B. (Note 36), pp. 576-575.

[*49] Articles 2010 and 2019 of the Civil Code.

[*50] S. van Erp, Akkermans B. (Note 36), p. 613th

[*51] Under the terms of sections 78 to 87 of the Law of Succession Act (pärimisseadus). - RT I 2008, 7, 52; 03/10/2016 16 English text available atlink (Most recently Accessed on 04/29/2017).

[*52] See Section 112 of the LSA.

[*53] See Sections 8-12 of the General Part of the Civil Code Act, or tsiviilseadustiku üldosa seadus (GPCCA). - RT I 2002, 35, 216; 03/12/2015, 106. English text available atlink (Most recently Accessed on 04/29/2017).

[*54] See Sections 115-131 of the GPCCA.

[*55] In the case of an interest-in-possession trust, one beneficiary is granted a right to the income from the trust or the right to use it, by the settlor. Upon the death of Said (first) beneficiary, the rest of the fund may pass to another beneficiary.

[*56] See Section 49 1 of the Land Register Act, or kinnistusraamatuseadus (LRA). - RT I, 1993, 65, 922; 06.28.2016, 8. English text available atlink (Most recently Accessed on 04/29/2017).

[*57] M. Lupoi (Note 12), p. 19th

[*58] See the LRA, Section 14 (2). So, § 70 of the Law of Property Act, or asjaõigusseadus (LPA). - RT I, 1993, 39, 590; 01.25.2017, 4. English text available atlink (Most recently Accessed on 04/29/2017).

[*59] See the LPA, Section 70 (1).

[*60] If a right belongs to several persons. See the LPA's Section 70 (7).

[*61] See the LPA's §32ff.

[*62] Under Section 70 (3) of the LPA.

[*63] Under Section 25 of the Family Law Act (perekonnaseadus). - RT I 2009, 60, 395; 21/12/2016 12 English text available atlink (Most recently Accessed on 04/29/2017).

[*64] See § 147 of the LSA.

[*65] See §§ 596-609 of the Law of Obligations Act, or võlaõigusseadus (LOA). - RT I 2001, 81, 487; 31.12.2016, 7. English text available atlink (Most recently Accessed on 04/29/2017).

[*66] P. Varul et al. Võlaõigusseadus II. Kommenteeritud väljaanne ['Law of Obligations II, Commented Edition']. Tallinn 2007, p. 713th

[*67] *ibid* . LOA, §610 (3).

[*68] LOA, §§ 614 (1) and 618 (2).

[*69] P. Varul et al. (See Note 66), p. 717th

[*70] LOA, §§ 596 (1) 7) and 618 (1).

[*71] Investeerimisfondide seadus. - RT I, 31.12.2016, 3 (in Estonian).

[*72] In the case of immovables, a notation needs to be made in the land register, Indicating the fund on Whose behalf the immovable is acquired. See Section 23 (1) (4) of the IFA. The assets may, alternatively, be registered in the name of the depositary, if there is consent of the CORRESPONDING manco; see Section 296 (2).

[*73] IFA, § 26 (4) (6).

[*74] IFA, §13 (4).

[*75] Compare Article 3 (6) (b), Article 31 (1), Article 3 (6) (a) and Article 30 of 4AMLD.

[*76] LOA, §692 (1).

[*77] LOA, §619.

[*78] P. Varul et al. Võlaõigusseadus III. Kommenteeritud väljaanne ['Law of Obligations III, Commented Edition']. Tallinn 2009, p. 22nd

[*79] CCSCd 23.9.2005, 3-2-1-80-05, paragraph 22. - RT III 2005, 29, 300 (in Estonian).

[*80] LPA, Section 63 (3) (5).

[*81] Väärtpaberituru seadus. - RT I 2001, 89, 532; 04.07.2017, 4. English text available atlink (Most recently Accessed on 04/29/2017).

[*82] Eesti väärtpaberite keskregistri seadus. - RT I 2000, 57, 373; 31.12.2016 25 English text available atlink (Most recently Accessed on 04/29/2017).

[*83] All shares have to be registered, and the rights attached to a registered share shall belong to the person who is Entered as the shareholder in the share register - see §228 of the Commercial Code (Äriseadustik). - RT I 1995, 26, 355; 07/13/2016. Bearer shares were allowed until the 2,001th

[*84] Presumably, They are obliged entities with the obligation to identify Their clients and perform other, respectivement tasks. See Section 6 (1) of the ECRSA.

[*85] P. Varul et al. vln Asjaõigusseadus II. Kommenteeritud. ['Property Law II, Commented Ed.']. Juura 2014, p. 434; K. Toommägi. Vallasasjade tagatisomandamine - selle OLEMUS yes realiseerimine ['Security transfers ownership of movable assets - essence and enforcement']. MA thesis. Tallinn, 2014. Available atlink (Most recently Accessed on 04/29/2017).

[*86] Financial collateral is thetransfer of a right of claim to money in an account, securities, or a credit claimsoft in order to Provide collateral When Both the collateral-provider and the collateral-taker are professional securities market-participants Or When at least one party is Latter in the class and the other one is a large corporation. See the LPA's Section 314 1 ff.

[*87] See E. Pisuke. Võlakirjaemissiooni tagatisagent ['The role of the security agent in the issuance of bonds']. MA thesis, 2013. Available atlink (Most Recently Accessed on 04.29.2017); A. Kotsjuba. Tagatisagendiga kaasnevate riskide maandamine Eesti õiguses ['Mitigation of legal risks related to security agents under Estonian law']. MA thesis. Tallinn 2013. Available atlink (Most recently Accessed on 04/29/2017).

[* 88] Firstly, on account of the nature of synthesis relationships. Secondly, the beneficiaries might be quite easily identifiable in some cases, with one Example being bondholders, who are registered in the ECRS in the case of securing bond issuance with the aid of a security agent. Then again, UBO registration in a special database is required so in cases Involving corporations, Whose owners are Likewise identifiable via registers in Estonia.

[* 89] SK Singh. Bank Regulations. Discovery Publishing House 2009, p. 44